

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6787 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

LOUIS A. RACINE
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-344

FORMERLY BENEFIT DECISION No. 6787
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S.S.A. No.

The claimant appealed to a referee from that portion of a departmental determination which disqualified him for unemployment insurance benefits for eight weeks beginning March 6, 1966 on the ground that he wilfully withheld a material fact to obtain benefits. The claimant conceded the propriety of that portion of the determination which held him ineligible for benefits for two weeks beginning July 19, 1964 under section 1252 of the Unemployment Insurance Code, and the corresponding notice of overpayment which held him liable for repayment of benefits in the amount of \$104 paid him with respect to such two weeks. Subsequent to the issuance of Referee's Decision No. SF-14735, we set aside the referee's decision and assumed jurisdiction under section 1336 [now section 413] of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant filed a claim for unemployment benefits effective July 5, 1964. During each of the weeks commencing July 19 and July 26, 1964, the claimant was employed and earned wages in excess of his weekly benefit amount of \$52. He certified for and received full benefits for each of these weeks. In each instance, he certified that he performed no services and received no wages. The claimant was unable to offer any explanation for his failure to report his employment and wages.

On July 15, 1965 a complaint was filed against the claimant under section 2101 of the Unemployment Insurance Code with the Department of Employment as the complaining witness. The matter came on for trial in the Municipal Court in and for the City and County of San Francisco on September 21, 1965. The claimant pleaded not guilty to the charge and the judge summarily dismissed the action. No action was taken by the prosecuting officer to reopen or to appeal the action of the court.

REASONS FOR DECISION

Section 1257 of the Unemployment Insurance Code provides in part:

"1257. An individual is also disqualified for unemployment compensation benefits if:

"(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division."

Section 1260(d) of the code provides:

"(d) An individual disqualified under subdivision (a) of Section 1257, under a determination transmitted to him by the department, is ineligible to receive unemployment compensation benefits for the week in which the determination is mailed to or personally served upon him, or any subsequent week, for which he is first otherwise in all respects eligible for unemployment compensation benefits and for not more than nine subsequent weeks for which he is otherwise in all respects eligible for unemployment compensation benefits. No disqualification under this subdivision shall be applied to any week if all or any portion of the week is beyond the three-year period next succeeding the date of the mailing or personal service of the determination. This subdivision shall not apply to an individual prosecuted under Section 2101." (Emphasis added)

It is apparent that the question of whether the claimant herein may be subjected to a period of disqualification under section 1260(d) of the code hinges upon whether or not he was "prosecuted" under section 2101 of the code, which section provides that it is a misdemeanor to wilfully make a false statement or knowingly fail to disclose a material fact to obtain benefits.

The term "prosecute" has been defined in Black's Law Dictionary, Third Edition, as follows: "To proceed against a person criminally. To prosecute an action is not merely to commence it but includes following it to an ultimate conclusion." (Citing Service & Wright Lumber Company v. Sumner Valley Railway Company (1915), 81 Or. 32, 152 P. 262). In Ray Wong v. Earle C. Anthony, Inc. (1926), 199 Cal. 15, 247 P. 894, 895, the Supreme Court of California stated in regard to the term "prosecution": "The term 'prosecution' is sufficiently comprehensive to include every step in an action from its commencement to its final determination." Thus, the issue appears to resolve itself further into a question of whether, under the circumstances here presented, the criminal action which was admittedly commenced was followed to an ultimate conclusion.

Section 1385 of the California Penal Code provides:

"1385. The court may, either of its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading."

Section 1387 of the Penal Code provides:

"1387. An order for the dismissal of the action, made as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but not if it is a felony."

From the above sections of the Penal Code, it is clear that the judge's action in dismissing the complaint against the claimant herein served to bar any other

prosecution for the same offense, since section 2101 of the code identifies the offense as a misdemeanor. Therefore, the dismissal must be deemed to have brought the criminal action to an ultimate conclusion.

Where the meaning of the language of a statute is free from ambiguity, the intention of the legislature must be determined from that language and it cannot be rewritten through interpretation to conform to any other presumed intention (Benefit Decision No. 6610). Applying this principle to the instant matter, it must be concluded that the legislature fully intended to relieve an individual of any period of disqualification under section 1260(d) of the code if the Department elects to prosecute the individual under section 2101. Had the legislature intended to relieve only those individuals who were convicted under code section 2101, it could easily have done so.

Under all of the circumstances of this case, we conclude that the claimant is not subject to a period of disqualification under section 1260(d) of the code. Therefore, the question of whether he made a wilful false statement within the meaning of code section 1257(a) is moot.

DECISION

The determination of the Department is modified and the notice of overpayment is affirmed. Benefits are denied under code section 1252 as provided therein, but the claimant is not subject to a period of disqualification under sections 1257(a) and 1260(d). If not previously repaid, the claimant is liable for repayment of benefits in the amount of \$104.

Sacramento, California, June 17, 1966.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6787 is hereby designated as Precedent Decision No. P-R-344.

Sacramento, California, May 3, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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